

147 FERC ¶ 61,145  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;  
Philip D. Moeller, John R. Norris,  
and Tony Clark.

Maritimes & Northeast Pipeline, L.L.C.

Docket No. RP13-300-000

ORDER ON FURTHER REVIEW

(Issued May 27, 2014)

1. On November 20, 2012, in Docket No. RP13-300-000, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) filed tariff records to be effective on December 31, 2012, which included eight currently effective, non-conforming service agreements, containing material deviations, and a list of non-conforming service agreements. On December 27, 2012, the Commission accepted Maritimes' proposed tariff records and non-conforming agreements, effective on the dates requested, subject to further review and order of the Commission.<sup>1</sup>

2. The Commission's review of the non-conforming service agreements is complete. Based on this review, as discussed below, we will permit Maritimes to grandfather the agreements containing those provisions that materially deviate from Maritimes' *pro forma* service agreements. However, any new agreements containing certain of the material deviations must be filed with, and approved by, the Commission before being placed into effect.

**Background**

3. In its November 20, 2012 transmittal, Maritimes asserted that, following the Commission's order in *Southern Star Central Gas Pipeline, Inc.*,<sup>2</sup> it undertook a review

---

<sup>1</sup> *Maritimes & Northeast Pipeline, L.L.C.*, 141 FERC ¶ 61,251 (2012) (December 27, 2012 Order).

<sup>2</sup> 125 FERC ¶ 61,082 (2008).

of all its currently effective, Part 284, firm transportation agreements. Maritimes stated its filing was the result of that review. Maritimes explained that most of the identified deviations in the non-conforming agreements reflect that the parties negotiated these agreements during the developmental stage of the initial Maritimes' system or as part of subsequent expansion projects. Maritimes argued that several of the deviations were identified for the Commission as part of the related certificate applications. In addition, Maritimes stated that the proposed tariff records containing the list of non-conforming agreements also include a reference to Contract No. 210107. Maritimes explained that this contract was filed with the Commission and approved in Docket No. RP06-361-000 prior to the requirement that non-conforming agreements be included as searchable tariff records.<sup>3</sup>

4. In its filing, Maritimes stated that it identified eight contracts as potentially materially non-conforming contracts.<sup>4</sup> Maritimes asserted that four of the eight tendered contracts were entered into prior to the Commission's clarification of its policies and regulations governing the identification and filing of materially non-conforming provisions in the Commission's 2003 Policy Statement.<sup>5</sup>

5. Maritimes included with its filing a clean version of each of the eight contracts, along with a redlined version of each of the contracts that, according to Maritimes, delineates each deviation contained in the contract from the applicable form of service agreement in effect at the time the service agreement was executed. In addition, Maritimes included a description of the deviations from the applicable form of service agreement or any other part of its tariff for each of the contracts and an explanation of why it believes the deviations either are not material or do not change the conditions under which service is provided and, therefore, do not present a risk of undue discrimination.

6. Maritimes stated that it and its shippers have relied on the tendered contracts in making important market and investment decisions. Maritimes argued that modifying the contracts at this time could cause significant economic harm to the parties. Maritimes, therefore, requested that, to the extent any of the filed agreements are found to be

---

<sup>3</sup> See *Maritimes & Northeast Pipeline, L.L.C.*, 118 FERC ¶ 61,110 (2007).

<sup>4</sup> Maritimes stated that, during its review, it identified four of the contracts as containing deviations it does not believe are material.

<sup>5</sup> Maritimes Transmittal at 2 (citing *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 (2003), *order on reh'g*, 114 FERC ¶ 61,042 (2006) (2003 Policy Statement)).

materially non-conforming, the Commission accept those contracts for filing and grant any and all waivers necessary to allow those contracts to be effective and remain in effect.<sup>6</sup>

7. In its December 27, 2012 Order, the Commission stated that Maritimes had presented the Commission with numerous non-conforming service agreements containing various deviations from Maritimes' *pro forma* tariff. Because the Commission had not completed its review of the service agreements and those agreements had already been in effect for a significant period, the Commission accepted Maritime's proposed tariff records to be effective December 31, 2012, as requested, subject to further review.

### **Discussion**

8. The Commission has completed its review of the currently effective non-conforming and potentially non-conforming service agreements filed by Maritimes. The contracts containing the non-conforming provisions are with: (a) Bangor Gas Company (Bangor), Contract Nos. 9003 and 9004; (b) Casco Bay, Contract No. 9000; (c) Emera Energy Services (Emera), Contract No. 210132; (d) Mosbacher Operating (Mosbacher), Contract No. 8006; (e) Newington Energy, Contract No. 210032; (f) Pengrowth U.S. (Pengrowth), Contract No. 210163; (g) Repsol Energy North America, Contract No. 210107; and (h) Shell Energy North America (Shell), Contract No. 210191. In its filing, Maritimes' asserts that the deviations contained in these agreements are either not material or permissible. Maritimes' included marked copies of the agreements indicating the deviations in its filing and also filed revised tariff records adding these service agreements to its list of non-conforming agreements.

9. Section 154.1(d) of the Commission's regulations requires pipelines to file with the Commission contracts that materially deviate from the pipeline's form of service agreements.<sup>7</sup> In *Columbia Gas*, the Commission explained that a material deviation is any provision in a service agreement that: (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (2) affects the substantive rights of the parties.<sup>8</sup> The Commission stated that it prohibits negotiated terms and

---

<sup>6</sup> See, e.g., *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,010 (2001) (*Columbia Gas*); *ANR Pipeline Co.*, 97 FERC ¶ 61,224, at 62,022-62,023 (2001) (*ANR Pipeline*) (supporting approval of certain contracts with deviations determined to be material under the standard announced in *Columbia Gas* because such contracts were long-standing agreements upon which parties had a greater reliance interest than the newly entered into contracts).

<sup>7</sup> 18 C.F.R. § 154.1(d) (2013).

<sup>8</sup> *Columbia Gas*, at 62,002 and *ANR Pipeline*, at 62,022-62,023.

conditions of service that result in a shipper receiving a different quality of service than that offered other shippers under the pipeline's generally applicable tariff or that affect the quality of service received by others.<sup>9</sup> However, not all material deviations are impermissible. As the Commission explained in *Columbia Gas*, provisions that materially deviate from the corresponding *pro forma* service agreement fall into two general categories: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination.<sup>10</sup> Moreover, if the Commission determines the contract contains a material deviation that is permissible, the Commission's regulations require the pipeline to file tariff records that reference the materially deviating contract.<sup>11</sup>

10. After reviewing the non-conforming and potentially non-conforming service agreements filed by Maritimes, we find that, although the non-conforming agreements contain material deviations from Maritimes' respective *pro forma* service agreements, the material deviations identified in these agreements are either related to events which have already occurred, such as the in-service dates of various expansions, are administrative or non-substantive in nature and pose no threat of undue discrimination among shippers, or can be grandfathered as longstanding agreements upon which shippers have reasonably relied. However, as discussed below, the Commission finds that any new agreements containing certain of the material deviations must be filed with, and approved by, the Commission before being placed into effect.

### **Maximum Daily Delivery Obligations**

11. According to Maritimes, four of the contracts entered into after the 2003 Policy Statement contain the same material deviation. These contracts are: Emera, Contract No. 210132; Mosbacher, Contract No. 8006; Pengrowth, Contract No. 210163 and Shell, Contract No. 210191. Exhibit B of these contracts reflects maximum daily delivery obligations (MDDOs) that exceed the maximum daily transportation quantity (MDTQ).<sup>12</sup> Maritimes explained that this provision was the result of unique circumstances involving

---

<sup>9</sup> *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 28 (2010).

<sup>10</sup> *Columbia Gas*, at 62,003; *ANR Pipeline*, at 62,024.

<sup>11</sup> 18 C.F.R. § 154.112(b) (2013).

<sup>12</sup> Exhibit B of these contracts includes a footnote stating that the customer is not entitled to deliver a quantity greater than its MDTQ under the service agreement on any given day. According to Maritimes, MDDOs that exceed the MDTQ are not typically permitted under section 4.2 of Maritimes' Rate Schedule MN365.

Maritimes' Phase III expansion project and was filed with the Commission as part of the certificate application and noted in the Commission's order.<sup>13</sup>

12. Maritimes further explained that two of these contracts were assigned as part of permanent capacity release agreements and one through the right of first refusal (ROFR) process.<sup>14</sup> Maritimes argued that these shippers and Maritimes reasonably relied on the legality of the subject provisions in making long term commercial decisions; and that removal of the provisions could unacceptably cause harm after the parties had reasonably relied on provisions which it states were: (a) required to comply with Commission policy; or (b) necessitated by the unique circumstances related to participation in an expansion project.<sup>15</sup> Maritimes requested that these provisions be grandfathered as longstanding agreements relied upon by the parties.

13. The Commission has recognized that it may be equitable to allow a material deviation to remain in effect if it is part of a longstanding agreement relied on by the parties and entered into prior to the clarification in *Columbia Gas* of the standards governing non-conforming agreements we spelled out in November 2001.<sup>16</sup> Factors to be considered in deciding whether to grandfather a provision include the following: (1) whether the shipper reasonably relied to its detriment on the legality of the provision when it entered into the contract such that it will now suffer irreparable harm if the

---

<sup>13</sup> See *Maritimes & Northeast Pipeline, L.L.C.*, 95 FERC ¶ 61,077, at 61,227 (2001) (*Maritimes*) (stating that an interconnection with Algonquin will give Maritimes' shippers another downstream pipeline alternative to access markets, the Boston market being only one example, for their gas and that use of Algonquin's system will eliminate additional transportation costs incurred by Maritimes' shippers that presently must use Tennessee to access markets on Algonquin, as well as the additional scheduling and curtailment risks inherent in using multiple downstream transporters. These considerations justified the conclusion that Maritimes' proposal offered benefits to its existing customers).

<sup>14</sup> The Pengrowth service agreement was to terminate on November 30, 2012. Maritimes included the Pengrowth agreement in this filing as a currently effective non-conforming service agreement. However, the Pengrowth service agreement is now moot and Maritimes filed to remove the agreement from its list of non-conforming service agreements in its tariff.

<sup>15</sup> Maritimes stated it recognizes that, consistent with the Commission's rulings in *Columbia Gas* and *Texas Eastern*, any new contracts containing such non-conforming provisions must be filed with, and approved by, the Commission before they may be placed into effect.

<sup>16</sup> See *Columbia Gas*, at 62,010.

provision was removed; (2) the remedies currently available to the shipper to return itself to the position it would have been in if it had known when the contract was originally executed that the provision was illegal; (3) whether other shippers are harmed by a continuation of the provision; (4) whether the Commission was aware of the contract when it was originally entered into and did not require it to be modified; and (5) whether the provision will continue indefinitely or will terminate at some date certain.<sup>17</sup>

14. Under the circumstances of this case, the Commission will permit the MDDO provisions to be grandfathered. The provisions were originally part of the proposed precedent agreements entered into before November 2001 for a new expansion project. All have been ongoing for some time and have been relied upon by the parties. Those provisions were filed with the Commission, and the Commission mentioned the subject provisions in its April 13, 2001 order approving the non-environmental aspects of the certificate application.<sup>18</sup> The MDDO provisions helped to assure that the existing customers would not be subsidizing the new Phase III expansion shippers and removing the MDDO provisions would take away that assurance. Thus, the shippers reasonably relied on the legality of the MDDO provisions. Moreover, no person has requested that the Commission modify or cancel these contracts. Therefore, these provisions may be grandfathered as longstanding agreements relied upon by the shippers in the proposed precedent agreements for the Phase III expansion project. Consistent with our rulings in *Columbia Gas* and *Texas Eastern*, any new Maritimes contracts containing such non-conforming provisions must be filed with, and approved by, the Commission before they may be placed into effect.

#### **Minimum Receipt Point Pressure**

15. The Bangor No. 1 and Bangor No. 2 agreements, executed December 28, 1999, are for firm transportation service on Maritimes' Bucksport and Veazie Laterals, respectively. The Bangor No. 1 agreement provides that the receipt point will be at the interconnect between Maritimes' mainline and the Bucksport Lateral, and the Bangor No. 2 agreement provides that the receipt point will be at the interconnect between Maritimes' mainline and the Veazie Lateral.

16. Maritimes constructed both these laterals in order to provide service to Bangor. On August 31, 1999, before the laterals were built, Maritimes entered into a letter agreement with Bangor concerning the minimum pressures at which Maritimes will deliver gas at the interconnections between its mainline and the two laterals (i.e. at the

---

<sup>17</sup> *Transcontinental Gas Pipe Line Co., LLC*, 136 FERC ¶ 61,135, at P 11 (2011).

<sup>18</sup> *See Maritimes*, 95 FERC at 61,220.

receipt point listed in the Bangor No. 1 and Bangor No. 2 agreements). The August 31, 1999 letter agreement requires a minimum delivery pressures of 560 psig at the Bucksport Lateral interconnect and 450 psig at the Veazy Lateral interconnect. Additionally, it obligates Maritimes to require this of other shippers using these laterals.<sup>19</sup> In addition to the August 31, 1999 letter agreement, Exhibit A to both the Bangor No. 1 and the Bangor No. 2 agreements includes a provision that the pressure at the receipt point will be Maritimes' "line pressure as it may exist from time to time, unless the parties hereto agree otherwise."

17. Maritimes states that, when it built the two laterals, neither it nor Bangor had sufficient operating history to know if Maritimes' line pressure, as it existed from time to time, would be sufficient for the gas to enter Bangor's gas distribution system. Specifically, Bangor was concerned that receipts into the head of each lateral would not have sufficient pressure to ultimately be delivered into Bangor's system at the delivery point off of the laterals. To address the lack of operating history and Bangor's concern, Maritimes agreed in the letter agreement to include a minimum pressure requirement in applicable third-party service agreements. Maritimes states that the letter agreement will expire on April 30, 2015. It also states that, notwithstanding the letter agreement, its design pressure was always intended to exceed the minimum pressure requirement in the letter agreement. Maritimes further states that the pressure has always been high enough to accommodate service to Bangor and the letter agreement has been redundant.

18. The August 31, 1999 letter agreement is a material deviation from Maritimes *pro forma* service agreement. However, the Commission will permit the letter agreement to be grandfathered for its remaining term, until April 30, 2015. As Maritimes explains, the letter agreement was entered into prior to the clarification in *Columbia Gas* of the standards governing non-conforming agreements in November 2001. In addition, the letter agreement was entered into in the context of an expansion project to address a specific operational concern of the customer, and no shipper has indicated that it has been harmed by the letter agreement. In fact, as Maritimes states, the letter agreement has not had any practical effect, because Maritimes line pressure has been consistently higher than the minimum pressure required by the letter agreement.

---

<sup>19</sup> The August 31, 1999 letter agreement attached to the instant filing requires that Maritimes specify a minimum delivery pressure obligation of: (a) 560 psig at the Bucksport Lateral Interconnect *in each third party transportation agreement* under Rate Schedule MN365... that designates the Bucksport Lateral Interconnect as a Primary or Secondary Point of Delivery; and (b) 450 psig at the Veazie Lateral Interconnect *in each third-party transportation agreement*... that designates the Veazie Lateral Interconnect as a Primary or Secondary Point of Delivery. *Emphasis added.*

The Commission orders:

Maritime's non-conforming agreements are approved, effective as of their respective effective dates, as discussed above.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.